Supreme Court, U.S.
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No. 96-1657

In The

Supreme Court of the United States

October Term, 1996

SILAS MULLINS,

Petitioner,

v.

MANNING COAL CORPORATION, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Kentucky

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under a Kentucky statute, workers' compensation benefits are payable to miners with pneumoconiosis (black lung disease) only if the miners were exposed to coal dust within the Commonwealth of Kentucky for a specified number of years. The Kentucky Supreme Court held that time limitation violated neither the Kentucky Constitution nor the Fourteenth Amendment to the United States Constitution.

The question presented for review is:

> Whether the Fourteenth Amendment to the Constitution precludes an "exposure within the State" requirement as a condition for entitlement to workers' compensation benefits on account of occupational pneumoconiosis.

LIST OF PARTIES AND RULE 29.1 STATEMENT

Petitioner is Silas Mullins.

Respondent Manning Coal Corporation has no parent company or nonwholly-owned subsidiaries.

Respondent Old Republic Insurance Company is a wholly-owned subsidiary of Old Republic International Corporation.

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STATEMENT OF THE CASE

Silas Mullins resided in Virginia his entire life except for six months in 1990 when he rented a home in Kentucky. Pet. App. 22. From 1977 to 1990, Mullins worked as a coal miner, exclusively in surface mines in Virginia. Pet. App. 15. On September 15, 1988, he applied for benefits under the federal Black Lung Benefits Act, 30 U.S.C. §§ 901-45. Mullins withdrew his claim on January 17, 1989, when he returned to work in a Virginia surface mine.

In March 1990, Mullins took a position with Manning Coal Corporation at a Kentucky mine. Mullins worked for Manning for slightly less than one year, ending March 1, 1991, when he was laid off. Pet. App. 21-22. Upon being laid off, Mullins returned to Virginia. From March until July of 1991, Mullins collected unemployment compensation. In July, Mullins began receiving social security disability compensation. His disability compensation is predicated on phlebitis and hypertension, as well as breathing problems. Mullins never applied for Virginia workers' compensation benefits. On December 3, 1992, Mullins reapplied for federal black lung benefits. That claim was denied. Mullins filed this claim for Kentucky workers' compensation benefits on June 3, 1992. Pet. App. 15. The Kentucky administrative law judge denied the claim in significant part because Mullins was exposed to coal dust in Kentucky for less than two years. Pet. App. 26-27.

On appeal, Mullins challenged the constitutional validity of Kentucky law requiring a two year minimum exposure to coal dust in Kentucky mines as a prerequisite

to qualifying for benefits. *See* KRS § 342.316(3)(b). The Kentucky Court of Appeals and then the Kentucky Supreme Court found no constitutional defect in the statutory exposure requirement and affirmed the denial of benefits. In the Kentucky courts Mullins did not argue that the in-State exposure rule violated his "right to travel" or any other "fundamental" right.

REASONS FOR DENYING THE WRIT

1. Introduction

Manning Coal Corporation and Old Republic Insurance Company oppose the petition for a writ of certiorari because Petitioner identifies neither a division of authorities nor any pertinent precedent from this Court from which the decision under review purportedly departs. Neither does Petitioner identify any compelling national interest requiring this Court's attention. In addition, Petitioner waived his arguments, ignores a justification for the challenged statute, and ignores his alternative remedies.

2. Petitioner Identifies No Conflict Or Confusion Among The Courts

Petitioner does not contend that the Supreme Court of Kentucky "decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." *See* Sup. Ct. Rule 10(b). Petitioner does not argue that the

Supreme Court of Kentucky "decided an important federal question in a way that conflicts with relevant decisions of this Court." *Id.* 10(c). At most, Petitioner argues that the Supreme Court of Kentucky refused to apply analogous principles that he believes it should have applied.

The absence of any significant division of authorities on the precise questions presented suggests that this matter does not warrant this Court's attention.

3. This Is An Economic Due Process Rights Case And It Raises No Issue Of National Significance

All States and the District of Columbia have enacted workers' compensation laws that regulate the relationship between employers and employees in the event of an occupationally related injury or disease. No two States' laws are the same in all respects. In Kentucky benefits are paid by the employer or its insurance carrier or from a fund financed generally by Kentucky employers and carriers. Pet. App. 22.

The constitutional validity of a provision of a workers' compensation law is determined in a minimal scrutiny analysis. *General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). Laws that affect the economic rights of employers and their employees will be upheld if there is any rational basis for their enactment. *Id.*

Kentucky's workers' compensation law had been very generous to miners with black lung disease, so much so that the employer-financed fund that paid most of

those benefits had an unfunded liability approaching $2 billion by 1987. *See* Report by the Center for Business & Econ. Research, Univ. of Kentucky, Workers' Compensation in Kentucky – A System in Distress 9-10, 15 (Feb. 1994); Senator H. Edward O'Daniel, Jr., 1987 Kentucky Workers' Compensation Law 29-30 (1988).

Kentucky's interest in protecting its employers from liability for black lung disease caused primarily by exposure in other places is reasonable and passes the economic rights due process test.

4. The Right To Travel Cases Do Not Apply

Kentucky's exposure requirements apply in claims filed by long-term residents of Kentucky in the same way that they are applied to residents of other States who move to and take up employment in Kentucky's coal mines, and in the same way they are applied to workers who work in Kentucky but live in an adjoining State. The Kentucky exposure rule does not therefore, restrict travel or migration, but merely regulates the terms or the economic relationship between certain Kentucky employers and Kentucky employees. This does not implicate the rights asserted by Petitioner Mullins. Mullins is free to travel to and from Kentucky or even to settle there but if he wants to work in Kentucky he will be subject to the same rules that regulate all other similarly situated Kentucky workers.

The right to travel cases relied upon by Mullins do not address his circumstances. *See Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 899 (1986) (plurality);

Memorial Hosp. v. Maricopa County, 415 U.S. 250, 251 (1974); *The Passenger Cases*, 48 U.S. (7 How.) 283 (1849).

The Kentucky statute is addressed to neither an exercise of political rights nor a basic "safety net" program.

> Perhaps the soundest explanation of the *Shapiro* [*v. Thompson*, 394 U.S. 618 (1969)] line of cases is that the state must offer a compelling justification for making welfare applicants, but not would-be users of those state benefits that are available to rich and poor alike, wait for a significant period after establishing their residency. . . .

Laurence H. Tribe, American Constitutional Law § 16-50, at 1646 n.11 (2d ed. 1988); *see id.* § 16-8, at 1457 ("these cases may thus be understood more readily as revolving about the issues of welfare and poverty, and not truly about the fundamental right to travel"). It would require a substantial enlargement of this Court's right to travel jurisprudence to give it controlling effect in Mullins' case, and doing so would cause substantial mischief.

5. Petitioner Waived The Argument Now Presented To This Court

By failing to cite any of the cases contained in his Petition to either of the courts below, Mullins waived his argument. Mullins' briefs below asserted without explanation that the Kentucky statute violated the federal Constitution. He failed to support that assertion with any argument or citation to the decision of any federal court

and he did not argue below that his rights to travel were abridged. *See Adams v. Robertson*, 117 S. Ct. 1028 (1997) (per curiam).

6. Petitioner Ignores Alternative Remedies

Petitioner argues that the Kentucky statute denies him any means to seek compensation for black lung disease. Pet. 7.[1] The federal Constitution does not guarantee him a right to bring such a claim. Moreover, Mullins could have opted out of coverage under the Kentucky workers' compensation program and retained his right to sue for occupational injuries including black lung disease. KRS 342.395.

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[1] The petition for certiorari filed here by Mullins also seeks review of the Kentucky Supreme Court's holding that the Kentucky exposure requirement is permissible under Kentucky's Constitution. Pet. 7. Because no claim is made that Kentucky's Constitution violates the United States Constitution or laws, the Kentucky Supreme Court properly had the last word and the question is not properly considered by this Court.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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